



June 20, 2019

Steven Cook, Deputy Assistant Administrator  
Office of Land and Emergency Management  
Environmental Protection Agency  
1200 Pennsylvania Ave, N.W., MS 5101T  
Washington, D.C. 20460

Chris Hladick, Regional Administrator  
Region 10  
Environmental Protection Agency  
1200 Sixth Avenue, Mail Code: RA-210  
Seattle, WA 98101

RE: Portland Harbor - Yakama Nation comments on the Portland Harbor Pre-Design Investigation and Baseline Sampling Evaluation (PDI Evaluation Report), dated June 17, 2019, submitted by the Pre-Remedial Design Group (Pre-RD Group)

Dear Mr. Cook and Mr. Hladick:

The Yakama Nation submits the following high-level comments regarding the above-referenced draft PDI Evaluation Report. We have had limited time to review the contents of this report and intend to submit additional, more detailed comments in the upcoming weeks. A summary of areas of particular concern is attached.

Overall, the collection of an updated site-wide baseline dataset is a critical accomplishment; however, this PDI Evaluation Report deviates extensively from the primary objectives of the 2017 PDI Administrative Settlement Agreement and Order on Consent (ASAOC). Instead of presenting a comprehensive, unbiased picture and evaluation of baseline conditions, **the report is a political statement of poorly supported conclusions meant to reopen the Portland Harbor Remedial Investigation (RI) and Record of Decision (ROD)**. This would effectively add years (if not decades) to the site cleanup timeline. Because of how far off the mark this report is, as well the time-sensitive nature of this data, it is imperative that EPA: (1) disapprove and decline further review of the PDI Evaluation Report; and (2) only accept data that meets data quality objectives (DQOs) to refine the conceptual site model and inform the remedial design process.

The Yakama Nation began documenting our concerns with potential pitfalls and cleanup delays that the PDI Evaluation Report could present during ASAOC negotiations in 2017. EPA agreed with many of Yakama Nation's concerns and assured us that this report would not result in reopening the Portland Harbor RI and ROD, as documented in EPA's November 30, 2017 response to dispute resolution on the Pre-RD ASAOC. Since then, EPA has continued to commit verbally and in writing to not changing the 2017 ROD.

Unfortunately, the report cherry-picks the data and uses statistical manipulation and misleading data presentations to support a clear agenda, rather than presenting the results in a neutral and scientifically sound manner. The report is not a data submission with technical analyses, as agreed to, but an attempt to challenge many key aspects of the ROD. The document should not use directive

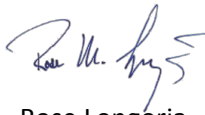
and conclusory language in areas that are contradictory to the ROD and not within PRPs' purview to decide. The report presents several contamination issues as new information for reconsideration of the ROD requirements (ex. Downtown Reach, regional fish contamination). However, many of these are already well-known issues that have previously been identified, evaluated, and considered in the ROD.

The main body of the report provides little or no data evaluation. Appendices E through L add 1200 pages of extraneous material that was not envisioned under the ASAOC objectives. Rather than summarizing baseline conditions, the focus and conclusions of the main report rely upon these appendices and analyses that do not comply with the ROD or ASAOC. Only by poring through the previous data reports and appendices can the flaws and inconsistencies in the "lines of evidence" be identified, as there is not enough information in the main text for decision-makers, agency and tribal partners, or the public to evaluate the conclusions and claims presented.

Therefore, due to the significant effort and resources that would be required for EPA and the MOU partners to collaborate, comment on, and revise this document, **the Yakama Nation urges EPA to disapprove the PDI evaluation report in order to prevent a hindrance or delay of the Portland Harbor cleanup** as outlined under the ASAOC, Statement of Work, section 5.6 (a)(v) "disapprove and decline further review of the submission, in whole or in part, where EPA determines that its review will require additional data or analysis, the performance of which will exceed funds available or hinder or delay cleanup." In doing this EPA will be able to continue to work towards its June 30, 2019 site-wide ASAOC execution goal, stop spending federal resources on an ASAOC that is already over the spending cap, and begin utilizing the data gathered by the Pre-RD group.

The Yakama Nation submits this letter in order to assist EPA with upholding its trust obligation for Treaty Resource protection. Please do not hesitate to contact me with questions. I can be reached at 509.865.5121 x6365 or [rose@yakamafish-nsn.gov](mailto:rose@yakamafish-nsn.gov).

Sincerely,



Rose Longoria  
Yakama Nation Fisheries  
Superfund Section

cc: Jim Woolford, EPA OSRTI Director  
Karl Gustavson, CSTAG Chair  
David Allnutt, Acting EPA OEC Director  
Davis Zhen, EPA Site Cleanup Section Chief

**Portland Harbor - Yakama Nation preliminary comments on the Portland Harbor Pre-Design Investigation and Baseline Sampling Evaluation (PDI Evaluation Report), dated June 17, 2019, submitted by the Pre-Remedial Design Group (Pre-RD Group)**

Areas of particular concern include, but are not limited to:

General Comments (main body, tables, figures):

1. Overall, the report cherry-picks the data and uses statistical manipulation and misleading data presentations to support a clear agenda, rather than presenting the results in a neutral and scientifically sound manner.
2. The report is not a data submission with technical analyses, as agreed to, but is a political statement of poorly supported conclusions meant to prepare for a challenging many key aspects of the ROD. The document should not use directive and conclusory language in areas that are contradictory to the ROD and not within PRPs' purview to decide.
3. The report presents several contamination issues as new information for reconsideration of the ROD requirements (ex. Downtown Reach, regional fish contamination). However, many of these are already well-known issues that have previously been identified, evaluated, and considered in the ROD.
4. The report repeatedly and dramatically overgeneralizes conditions on a site-wide basis, which mathematically 'dilutes' or masks what the baseline picture is at scales meaningful for use in remedial design. The site is extremely large and heterogeneous. It is approximately 10 miles long, caused by over 150 different sources, and has several individual sub-sites that would clearly have qualified for NPL listing on their own merit.
5. These site-wide simplifications are biased, not balanced, presentations of baseline data. Although, we agree that the data may indicate general and overall trends that indicate some degree of site-wide attenuation over time, there are clearly sub-areas of the Portland Harbor site that have not improved.
6. The data needs to be evaluated at a variety of scales, including scales those required in the ROD and that will help in remedial design at the Sediment Management Area (SMA) level.
7. The report does not adequately evaluate baseline data for each ROD Remedial Action Objective (RAO). A baseline for each RAO is needed to determine effectiveness in the future.
8. The report discussion, tables, and figures focus on completely different scales than required by the ROD.
9. Do not reopen the ROD to change background, CULs, and RALs. We conclude that the ROD RALs are sufficient for moving forward with remedial design. Concerns about ROD background and CULs should be address well after cleanup completion, using long-term monitoring data to understand how the site behaves.
10. This report also underestimates toxicity and risks by discussing each focused contaminant of concern (COC) individually. There are numerous bioaccumulative, persistent, and highly toxic contaminants impacting Portland Harbor that have a cumulative impact on toxicity and risk. Cumulative impacts must also be evaluated.
11. Use of "net depositional" terminology to infer sediment stability and lack of transport of contaminated sediments downstream, when in fact a net depositional environment may have substantial sediment transport onto and out of the area (as shown in Table 2.2). In addition, not all areas of the site are depositional and natural attenuation will not occur in these areas.

Specific Comments:

12. Appendix D. A backwards-looking comparison of the baseline data to RI/FS data in an attempt to demonstrate that extensive natural recovery has already occurred, to justify the use of MNR (no active cleanup) outside of SMAs. The report attributes decreases in contaminant concentrations entirely to natural processes; however, there are other reasons for this observation. For example, RI data collection was targeted in known source areas and would obviously have higher concentrations. The baseline dataset was designed to be random and would, by nature, be lower. Backward comparison of baseline to past RI datasets has serious flaws and will significantly overstate the degree and rate of natural attenuation. Analysis methods are different. Lastly, comparison of two points in time does not represent a trend. Long-term data will be needed for trend analysis.
13. Appendix E. Presents a data evaluation framework that is alternative to the ROD, discrediting dioxin/furan toxicity to avoid cleanup to standards and reduce the focused COCs to PCBs, PAHs, and DDx.
14. Appendix F. Goes outside of ASAOC and evaluates background contamination levels for media besides porewater. In addition, with absolutely no basis in the data collected, argues that sediment background concentrations for arsenic should be increased.
15. Appendix F. Includes the Downtown Reach in redefining background concentrations, to justify raising CULs and to suggest that additional cleanup would not be effective. There are source areas within the Downtown Reach that are slated for cleanup. Those source areas are currently impacting the Portland Harbor area and, with their cleanup, background contaminant concentrations should decrease.
16. Appendix G. Revises the human health risk assessment using national EPA fish consumption rates rather than those appropriate for Portland Harbor. This is out of the ASAOC scope and is an RI re-opener. Implies or states that risks to recreational and subsistence fishers are not high enough to be of concern. This is not protective of Treaty Rights.
17. Appendix H. Discredits the food web model to eliminate the need for compliance with RAOs based on human and wildlife consumption of fish. This is an RI re-opener and is outside of the ASAOC scope.
18. Appendix I. Recalculates significantly higher RALs based on all of the above. This is out of the ASAOC scope. We do not agree with re-opening the ROD to change RALs, which are sufficient for moving forward with remedial design.
19. Appendix J. Reduces SMA areas to one-third of the ROD acreage based on all of the above. We don't agree with many aspects of the underlying analysis and this is inappropriate.
20. Appendix K. Eliminates the PTW designation based on legal arguments, and proposing alternative less protective remedies for such areas based on alternative cap breakthrough modeling. We disagree. This is an ROD re-opener and is outside of the ASAOC scope.
21. Appendix L. Suggests that no dredging should be required prior to capping, and no capping is needed after dredging, despite protectiveness and habitat concerns. This is not protective of Treaty Resources.